

Hearing Date/Time: January 18, 2019 at 10:00 A.M.

Objection Deadline: January 11, 2019 at 4:00 P.M.

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Attorneys for Cupid Foundations, Inc.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	:	Case No. 18-23538 (RDD)
	:	
Debtors.	:	(Jointly Administered)
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**NOTICE OF HEARING ON MOTION OF CUPID FOUNDATIONS, INC. FOR
ALLOWANCE OF SECTION 503(b)(9) ADMINISTRATIVE EXPENSE CLAIM**

PLEASE TAKE NOTICE that a hearing shall be held on **January 18, 2019 at 10:00 A.M.** (the “**Hearing**”) before the Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Courthouse, 300 Quarropas Street, White Plains, New York 10601 (the “**Bankruptcy Court**”), to consider the *Motion of Cupid Foundations for Allowance of Section 503(b)(9) Administrative Claim* (the “**Motion**”).

PLEASE TAKE FURTHER NOTICE that any responses or objections (“**Objections**”) to the Motion shall be in writing, shall conform to Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Bankruptcy Court, shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interest, on a CD-ROM, in text-searchable

portable document format (PDF), to the extent applicable, and shall be served in accordance with the *Amended Order Implementing Certain Notice and Case Management Procedures* (the “**Amended Case Management Order**”), entered on November 1, 2018 [Docket No. 405], so as to be filed and received no later than **January 11, 2019 at 4:00 p.m.** (Eastern Time) (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that if an Objection to the Motion is not received by the Objection Deadline, the relief requested shall be deemed unopposed, and the Bankruptcy Court may enter an order granting the relief sought without a hearing pursuant to the Amended Case Management Order.

Dated: New York, New York
December 21, 2018

Respectfully submitted,

/s/ James J. Vincequerra
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In re: : Chapter 11
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SEARS HOLDINGS CORPORATION, *et al.*, : Case No. 18-23538 (RDD)
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Debtors. : (Jointly Administered)

**MOTION OF CUPID FOUNDATIONS, INC. FOR
ALLOWANCE OF SECTION 503(b)(9) ADMINISTRATIVE EXPENSE CLAIM**

**TO: THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:**

Cupid Foundations, Inc., (the “**Claimant**”), by and through its counsel, Alston & Bird LLP, files this Motion pursuant to §§ 105(a) and 503(b)(9) of title 11, United States Code, 11 U.S.C. § 101, et seq. (the “**Bankruptcy Code**”) for entry of an Order allowing Claimant’s administrative expense claim in the amount of \$27,752.88 (the “**Motion**”) against Sears Holdings Corporation, one of the above-captioned debtors (the “**Debtor**”), and respectfully shows the Court as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and this motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

II. FACTUAL BACKGROUND

2. On October 15, 2018 (the “**Petition Date**”), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues to operate and manage its business as debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. On October 24, 2018, an Official Committee of Unsecured Creditors (the “**Committee**”) was appointed by the Office of the United States Trustee and is represented by counsel Akin, Gump, Strauss, Hauer & Feld, LLP.

4. Between September 26, 2018 and October 4, 2018, in the ordinary course of business, Claimant shipped goods to the Debtor for sale in the Debtor’s retail business, which the Debtor received within twenty days before the Petition Date. As of the Petition Date, Claimant is owed \$27,752.88 on account of such goods for which the Debtor has not paid. A copy of the Claimant’s Reclamation Demand [Docket No. 434] which includes invoices evidencing the shipment of such goods between September 26, 2018 and October 4, 2018 is annexed as **Exhibit “A”**.

III. **RELIEF REQUESTED**

5. By this Motion, Claimant requests that the Court enter an Order allowing Claimant’s administrative expense claim against the Debtor in the amount of \$27,752.88 (the “**503(b)(9) Administrative Expense Claim**”), which represents the full value of the goods Claimant delivered to Debtor during the 503(b)(9) period.¹

6. 11 U.S.C. § 503(b)(9) provides as follows:

§ 503. Allowance of administrative expenses

¹ Since the Petition Date, Debtor has made \$13,735.24 in payments against the invoices that make up the 503(b)(9) Administrative Expense Claim. As such, while Claimant seeks administrative priority for the entirety of the 503(b)(9) Administrative Expense claim, only \$14,017.64 remains outstanding for payment at this time.

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

7. These “20 day” administrative expenses are treated the same as administrative expenses arising from the post-petition delivery of goods and services. *In re Dana Corp.*, 367 B.R. 409, 415 (Bankr. S.D.N.Y. 2007); *In re Bookbinder's Rest., Inc.*, No. 06-12302, 2006 WL 3858020, at *2 (Bankr. E.D. Pa. Dec. 28, 2006).

8. The Debtor received \$27,752.88 in goods within twenty days preceding the Petition Date from Claimant in the ordinary course of the Debtor's business. Except as set forth in footnote 1, the Debtor has not paid for these goods. Claimant has satisfied the requirements of §503(b)(9) and is entitled to the 503(b)(9) Administrative Expense Claim in the amount of \$27,752.88 and payment of \$14,017.64.

[Remainder of page intentionally left blank]

WHEREFORE, Claimant respectfully requests that the Court enter an Order, substantially in the form attached hereto as **Exhibit "B"**, granting the Motion, providing Claimant with an administrative expense claim under Section 503(b)(9) of the Bankruptcy Code against the Debtor in the amount of the amount of \$27,752.88, directing the Debtor to make payment to Claimant in the amount of \$14,017.64 and granting Claimant such other and further relief as the Court deems just and appropriate.

Dated: New York, New York
December 21, 2018

Respectfully submitted,

/s/ James J. Vincequerra

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